

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

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|--------------------------------|---|--------------------------------|
| CHARLES TUCKER, | : | |
| Plaintiff, | : | Civil Action No. 12-6560 (SRC) |
| v. | : | |
| D&J UNDERCAR SPECIALISTS, INC. | : | OPINION & ORDER |
| et al., | : | |
| Defendants. | : | |
| | : | |

CHESLER, U.S.D.J.

This matter comes before the Court on two motions: 1) the motion to dismiss the Complaint for failure to state a valid claim for relief, pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), by Defendants D&J Undercar Specialists, David Squicciarini, and John Squicciarini (collectively, “Defendants”); and 2) the cross-motion to amend by Plaintiff Charles Tucker. For the reasons stated below, the motion to dismiss will be denied as moot, and the cross-motion to amend will be granted as unopposed.

Defendants first moved to dismiss on two points: 1) the first, third and fifth counts of the Complaint failed to state a valid claim for relief; and 2) the Complaint must be dismissed for lack of subject matter jurisdiction. In response, Plaintiff cross-moved for leave to file an Amended Complaint. Defendants stated that they do not oppose the cross-motion. Defendants’ reply brief makes clear that granting Plaintiff leave to file the proposed Amended Complaint resolves all the issues that Defendants raised in their motion to dismiss. The proposed Amended Complaint

withdraws the first, third, and fifth counts in the original Complaint and, Defendants state, resolves the issue of subject matter jurisdiction by pleading diversity jurisdiction.

Defendants, in their reply, ask that this Court also specifically dismiss the original eighth count, for negligent infliction of emotional distress. The proposed Amended Complaint contains no claim for negligent infliction of emotional distress, and it appears that Plaintiff has abandoned this claim.

For these reasons,

IT IS THEREFORE on this 26th day of February, 2013,

ORDERED that Plaintiff's cross-motion for leave to amend the Complaint (Docket Entry No. 11) is **GRANTED**, and the Clerk shall file the proposed Amended Complaint (Krenkel Cert. Ex. A); and it is further

ORDERED that Defendant's motion to dismiss the Complaint for failure to state a valid claim for relief, pursuant to Federal Rule of Civil Procedure 12(b)(6), (Docket Entry No. 10) is **DENIED** as moot.

s/ Stanley R. Chesler
Stanley R. Chesler, U.S.D.J.